



TD 93/210 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor or offshore borrower in an offshore leveraged lease which has an Australian end-user?

 This cover sheet is provided for information only. It does not form part of *TD 93/210 - Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor or offshore borrower in an offshore leveraged lease which has an Australian end-user?*

 This document has changed over time. This is a consolidated version of the ruling which was published on *13 October 2021*

This Determination, to the extent that it is capable of being a 'public ruling' in terms of Part IVAAA of the *Taxation Administration Act 1953*, is a public ruling for the purposes of that Part. Taxation Ruling TR 92/1 explains when a Determination is a public ruling and how it is binding on the Commissioner. Unless otherwise stated, this Determination applies to years commencing both before and after its date of issue. However, this Determination does not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Determination (see paragraphs 21 and 22 of Taxation Ruling TR 92/20).

[*Note: This is a consolidated version of this document. Refer to the Legal Database (www.ato.gov.au/Law) to check its currency and to view the details of all changes.*]

Taxation Determination

Income tax: Offshore Banking Units (OBU) - does the definition of advisory activity in section 121D(7) encompass advising an offshore debt investor or offshore borrower in an offshore leveraged lease which has an Australian end-user?

1. No. Where the advice concerns the making of a particular investment such as a leverage lease, the advice must relate to the kinds of investment referred to in subsection 121D(6) of the *Income Tax Assessment Act 1936* - the investment activity provision.
2. If the leveraged lease involves the leasing of equipment which is purchased, subsection 121D(6) requires the equipment to be located outside Australia if it is to qualify as an investment activity.
3. If the advisory work relating to the raising of offshore debt finance is part and parcel of the proposed arrangement, and that arrangement involves an Australian end-user, none of the advice qualifies as advisory activity for the purposes of subsection 121D(7).

Note: The OBU regime is closed to new entrants from 14 September 2021. The concessional tax treatment for existing OBUs in respect of offshore activities will be removed effective from the 2023-24 income year. Interest payments paid on or after 1 January 2024 on offshore borrowings by OBUs will no longer be exempt from withholding tax.

Commissioner of Taxation

28/10/93